

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LEGION FOR THE SURVIVAL OF
FREEDOM, INC.,

Plaintiff and Respondent,

v.

LIBERTY LOBBY, INC.,

Defendant and Appellant.

D040996

(Super. Ct. No. N64584)

APPEAL from an order of the Superior Court of San Diego County, Runston G. Maino, Judge. Order affirmed in part, reversed in part; motion to dismiss appeal denied.

Judgment debtor Liberty Lobby, Inc. (Liberty) appeals from a postjudgment assignment order in favor of its judgment creditor Legion for the Survival of Freedom, Inc. (Legion). The order assigned Legion the right to receive certain interests belonging to Liberty, including current and future bequests in Liberty's name, and also directed that all proceeds payable to Liberty from any trust or probate, regardless of its location, be

paid directly to Legion. Liberty contends certain items subject to the assignment order, including bequests, are not properly assignable under Code of Civil Procedure section 708.510, subdivision (a). It further contends the court exceeded its jurisdiction when it assigned proceeds from trusts and probates located anywhere, particularly outside of California.

Legion moves to dismiss the appeal based on Liberty's asserted efforts to avoid satisfying the judgment including by filing frivolous appeals and failing to abide by superior court orders. We deny Legion's motion to dismiss the appeal. We reverse that portion of the order purporting to compel payment of probate proceeds by nonresident third persons or purporting to place a lien on out-of-state probate proceeds. Otherwise, we affirm the order.

FACTUAL AND PROCEDURAL HISTORY

Liberty is the judgment debtor on a \$2,650,000 judgment entered in Legion's favor in November 1996. At that time, Legion also obtained a judgment in the sum of \$6,430,000, jointly and severally, against individuals Willis Carto and Elisabeth Carto, among others. The judgment provides that any sums paid by Liberty are to be credited to amounts payable by its codefendants.

In August 2002, continuing its efforts to satisfy the judgment, Legion obtained an order assigning it certain interests belonging to Liberty, including all rights, title and interest in Liberty's good will; the use of Liberty's name and the names of all its subsidiaries; the right to record Liberty's name with public record agencies; its website rights; and the right to receive current and future bequests in Liberty's name. The order

enjoined Liberty and the Cartos from receiving, transferring, assigning, disposing, interfering with, or encumbering any of the assigned rights or current and future right to payment. The order directed that "any and all proceeds due from any Trust or Probate, wherever located" payable to Liberty and/or the Cartos were to be paid directly to Legion. None of the judgment debtors filed written opposition to the motion or appeared at the hearing.¹

DISCUSSION

I. Motion to Dismiss

Legion moves to dismiss Liberty's appeal on the ground it and the other judgment debtors have systematically engaged in efforts to frustrate Legion's efforts to satisfy its judgment, including by filing frivolous appeals and repeatedly violating court orders. Liberty opposes the motion on grounds this court considered and rejected an earlier motion made on similar grounds, and Legion's evidence does not establish Liberty's noncompliance with any court order.

We are not prevented from considering the present dismissal motion, even if Legion argued the same or similar grounds in an earlier motion. The order summarily denying the earlier motion does not constitute law of the case on the issues presented in

¹ Before the hearing on its motion, Legion filed a "Notice of Non-Opposition" to its motion for the assignment order stating it had received no opposition, objection, request for extension of time or response whatsoever from Liberty. In its brief, Liberty concedes it did not oppose Legion's motion or appear at the hearing. The hearing on the matter went unreported. We consider that portion of the court's order – stating Liberty and the Cartos appeared at the hearing on Legion's motion through their counsel – to be an error.

that motion because it is not a determination on the merits. (Cal. Const., art. VI, § 3; *In re Christopher A.* (1991) 226 Cal.App.3d 1154, 1159; see also *Kowis v. Howard* (1992) 3 Cal.4th 888, 896.) This rule is supported by policies favoring judicial economy and the right to oral argument. (*Kowis v. Howard*, at pp. 898-899.) "As with a summary denial of a writ petition, a summary denial of a motion to dismiss the appeal should not preclude later full consideration of the issue, accompanied by a written opinion, following review of the entire record and the opportunity for oral argument." (*Id.* at p. 900.)

Nevertheless, Legion has not shown dismissal of Liberty's appeal is warranted on this record. It relies on this court's inherent power to stay or dismiss an appeal by any party who has refused to comply with orders of the trial court. (See *TMS, Inc. v. Aihara* (1999) 71 Cal.App.4th 377, 379 and cases cited therein.) This power may be exercised even absent a formal adjudication of civil contempt. (*Ibid.*; *Alioto Fish Co. v. Alioto* (1994) 27 Cal.App.4th 1669, 1683 (*Alioto*).) We concede Legion's submission shows a long contentious history of posttrial enforcement proceedings; among other things it contains a July 1998 order awarding sanctions against two of the individual judgment debtors (Lewis and Lavonne Furr) and an attorney for making unmeritorious objections at the Cartos' debtors examinations; a February 2000 bankruptcy court order determining Legion's judgment against the Cartos nondischargeable in bankruptcy; a December 2000 order finding the judgment debtors in breach of a forbearance and settlement agreement entered into between the parties thereby reviving Legion's ability to pursue collection on the judgment; a December 2001 anonymous typewritten threat against the trial court judge, Liberty's receiver and Legion's counsel; and a summary dismissal order reflecting

Liberty's unsuccessful effort to seek Chapter 11 bankruptcy protection in another jurisdiction. The specified documents, however, do not include findings as to *Liberty's* compliance with court orders or other process, and they do not permit a conclusion that Liberty (as opposed to some of the other individual judgment debtors) has engaged in continuing defiance of court orders or other obstructive conduct. (Compare, *Alioto, supra*, 27 Cal.App.4th at p. 1683 [underlying orders to compel compliance with receiver order and imposing sanctions contained judicial findings that the appellants had persisted in willfully disobeying the trial court's orders].)

The record also contains a November 1995 pretrial order compelling discovery from Liberty and imposing monetary sanctions against it, as well as, more recently, two restraining and turn-over orders issued against Liberty and the Cartos barring them from interfering with funds from one trust and another estate. But absent a showing that Liberty has violated these orders, the orders themselves do not justify dismissal of this appeal. Further, the orders by themselves do not contain findings from which we can conclude Liberty has engaged in such obstructive conduct as to justify such extreme relief.

We acknowledge that at various times between February 1998 and October 2001, the superior court issued orders to show cause why the Cartos, and in one instance both the Cartos and Liberty, should not be held in contempt for willfully disobeying certain orders. Setting aside the fact only one of these orders named Liberty as a party ordered to appear, the mere issuance of an order to show cause does not establish Liberty's willful violation of any court order. An order to show cause acts as a summons to appear in

court on a certain day and to show cause why a certain thing should not be done.

(*Cedars-Sinai Imaging Medical Group v. Superior Court* (2000) 83 Cal.App.4th 1281, 1286 (*Cedars-Sinai*), citing *Morelli v. Superior Court* (1968) 262 Cal.App.2d 262, 269.)

At best, the order indicates the trial court was satisfied with the sufficiency of Legion's affidavit — not present in the record before us — supporting its request for such an order.

(Code Civ. Proc., §§ 1211, subd. (a), 1211.5; see *Cedars-Sinai*, at p. 1286.) Unlike the sanctions orders and order compelling compliance with the receiver order in *Alioto*, these orders do not contain judicial findings that Liberty has persisted in disobeying the trial court's orders. (*Alioto, supra*, 27 Cal.App.4th at p. 1683.)

Nor do we find justification to dismiss this appeal in the supporting declaration submitted by Legion's counsel. He states generally that the "debtors' " conduct includes willful disobedience of turnover orders, refusal to comply with assignment orders, and intentional asset concealment in violation of court orders. But such broad conclusions do not compel the requested relief against *Liberty*, the appellant herein. Legion has not shown any relationship between the individual defendants and Liberty other than through the declaration of Mark Weber, Legion's President, who states only that the Cartos drew salaries from Liberty. This evidence does not establish that the Cartos are Liberty's principles or agents, or otherwise are authorized to act on Liberty's behalf. Nor is there record evidence of such unity of interest and ownership among the Cartos and Liberty to permit alter ego-type findings. (Compare, *Say & Say v. Castellano* (1994) 22

Cal.App.4th 88, 94.²) The Cartos and Liberty are separate defendants who are subject to different, non-joint-and-several, judgments. Absent evidence permitting us to attribute the Cartos' actions to those of the corporate entity, Liberty, we will not do so in considering Legion's motion to dismiss on the stated ground.

We proceed to the merits of Liberty's appeal.

II. *Liberty has Waived the Right to Challenge the Assignment Order on the Ground that Certain Assets are Not Subject to the Assignment Procedure*

Liberty challenges the trial court's assignment order on grounds that assets such as Liberty's goodwill and the right to its name and Web site, and present and future bequests, are not susceptible to the assignment procedure of Code of Civil Procedure section 708.510, subdivision (a). The contention, however, has been waived by Liberty's failure to appear and present any opposition to Legion's request for an assignment order. (*Doers v. Golden Gate Bridge Highway & Transp. Dist.* (1979) 23 Cal.3d 180, 184-185,

² Factors relevant to whether an individual should be treated as the alter ego of a corporation include "the commingling of funds and other assets; the failure to segregate funds of the individual and the corporation; the unauthorized diversion of corporate funds to other than corporate purposes; the treatment by an individual of corporate assets as his own; the failure to seek authority to issue stock or issue stock under existing authorization; the representation by an individual that he is personally liable for corporate debts; the failure to maintain adequate corporate minutes or records; the intermingling of the individual and corporate records; the ownership of all the stock by a single individual or family; the domination or control of the corporation by the stockholders; the use of a single address for the individual and the corporation; the inadequacy of the corporation's capitalization; the use of the corporation as a mere conduit for an individual's business; the concealment of the ownership of the corporation; the disregard of formalities and the failure to maintain arm's-length transactions with the corporation; and the attempts to segregate liabilities to the corporation." (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1213, fn. 3.)

fn. 1 [appellate court will ordinarily not consider procedural defects or erroneous rulings in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the lower court by some appropriate method]; *Cabrini Villas Homeowners Assn. v. Haghverdian* (2003) 111 Cal.App.4th 683, 693.)

III. *Assignment of Trust and Probate Proceeds*

Liberty contends the trial court exceeded its jurisdiction in ordering the assignment of proceeds from probates and trusts that are administered outside the state of California. With respect to the order assigning trust proceeds, Liberty further argues the assignment order cannot reach trusts having restrictions on voluntary or involuntary transfers, since such beneficial interests are not subject to a money judgment until they are paid to a beneficiary. As with Liberty's previous arguments, the latter argument cannot be raised for the first time on appeal because it does not implicate the trial court's fundamental jurisdiction to act. Liberty waived such a contention by its failure to appear and present this argument to the trial court. (See part II, *ante*.)

Our review is limited to whether the trial court had fundamental jurisdiction to issue the assignment order or portions of it, since such a challenge may be raised for the first time on appeal. (*People v. Mower* (2002) 28 Cal.4th 457, 474, fn. 6 ["Issues relating to jurisdiction in its fundamental sense . . . may be raised at any time"].) We resolve Liberty's contentions under familiar appellate principles by which we presume the correctness of the trial court's order. Generally, "[a] ruling by a trial court is presumed correct, and ambiguities are resolved in favor of affirmance." (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631 (*Winograd*).) All intendments and

presumptions are indulged in favor of the correctness of the trial court's order. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Further, courts should interpret decrees or judgments in such a manner as to make them valid and with reference to the law regulating the rights of the parties. (*Southern Pacific Pipe Lines, Inc. v. State Bd. of Equalization* (1993) 14 Cal.App.4th 42, 57, citing *Bruce v. Gregory* (1967) 65 Cal.2d 666, 678.) " 'Particularly where it appears that an ambiguity is the result of oversight and inadvertence, "the judgment as entered should be liberally construed with a view of giving effect to the manifest intent of the court." ' ' ' (*Southern Pacific Pipe Lines, Inc. v. St. Bd. of Equalization*, at p. 57.)

The burden of demonstrating error – that the superior court lacked jurisdiction to act – rests on Liberty. (*Winograd, supra*, 68 Cal.App.4th at p. 632; *People v. \$6,500 U.S. Currency* (1989) 215 Cal.App.3d 1542, 1548.)

1. *Trust or Probate Proceeds in Liberty's Possession*

We first hold the trial court did not exceed its jurisdiction to the extent the assignment order requires Liberty to turn over or deliver to Legion trust or probate proceeds *in Liberty's possession*, regardless of the location of the underlying trust or probate estate. There is no dispute or challenge over the court's in personam jurisdiction over Liberty. As Liberty acknowledges, it is settled in this state that courts have the power to indirectly affect out-of-state property by means of a decree, based on personal jurisdiction over the parties, which determines the parties' personal rights or equities in that property. (See *In re Marriage of Economou* (1990) 224 Cal.App.3d 1466, 1479-1480; *Barber v. Barber* (1958) 51 Cal.2d 244, 247 [it is settled in California that a court

having jurisdiction of the parties may adjudicate their rights to land located in another state and that the adjudication is res judicata and is to be accorded full faith and credit in the situs state regardless of whether the decree orders execution of a conveyance]; *Rozan v. Rozan* (1957) 49 Cal.2d 322, 330; *McElroy v. McElroy* (1948) 32 Cal.2d 828, 831; *Beeler v. Beeler* (1961) 193 Cal.App.2d 548, 550; *Hardy v. Hardy* (1958) 164 Cal.App.2d 77, 79 ["[A] court having the parties before it can, in a proper case, through its coercive powers, compel them to act in relation to property not within the territorial jurisdiction of the court"]; *Tischhauser v. Tischhauser* (1956) 142 Cal.App.2d 252, 255.) Thus, if and when Liberty comes into possession of trust or probate proceeds, it is compelled by virtue of the court's in personam jurisdiction over it to turn over those proceeds directly to Legion. (E.g., *Beeler v. Beeler*, at p. 550.)

2. Order as to Trust Proceeds Due to Liberty

a. Standing

Legion contends Liberty lacks standing to challenge the court's jurisdiction to issue the assignment order directed at trust proceeds. Legion maintains Liberty has no such standing because it is not the real party in interest, i.e., an executor, administrator or trustee of the trust that has been served with an assignment order. Legion cites generally to *Saks v. Damon Raike & Co.* (1992) 7 Cal.App.4th 419, in which two trust beneficiaries filed a civil action against an attorney and real estate broker employed by the trustee based on the defendants' alleged negligence and breach of fiduciary duty in connection with the trust's purchase of certain real property. (*Id.* at p. 423.) *Saks* held the plaintiffs lacked standing to bring their claims in a civil action and that their only proper course

was to file a petition in the probate department to compel the trustee to sue the defendants or a petition to remove the trustee and appoint a trustee ad litem to file the action. (*Id.* at p. 430.) *Saks* relied on the general rule that "the person who has the right to file suit under the substantive law is the real party in interest" (*id.* at p. 427), and the common law principle that the trustee of an express trust is the real party in interest on a cause of action prosecuted on the trust's behalf because the trustee has legal title to the cause. (*Ibid.*) "The corollary to this rule is that the beneficiary of a trust generally is not the real party in interest and may not sue in the name of the trust. A trust beneficiary has no legal title or ownership interest in the trust assets; his or her right to sue is ordinarily limited to the enforcement of the trust, according to its terms." (*Ibid.*)

Saks is inapposite; it does not address the particular circumstances here, where the trust beneficiary is not seeking to file suit on the trust's behalf, but is asserting an objection to the court's authority to issue an order purporting to assign its interest in trust assets.³ Legion has not persuaded us that Liberty is without standing to challenge the court's jurisdiction to act under these circumstances.

³ We observe the Probate Code provides that trust beneficiaries are "interested persons" for purposes of standing to object at hearings under the Probate Code. (Prob. Code, §§ 48, 1043; *Arman v. Bank of America* (1999) 74 Cal.App.4th 697, 701-703.) Under section 48, subdivision (a)(1), an interested person generally includes "[a]n heir, devisee, child, spouse, creditor, *beneficiary*, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding." (Italics added.) Subdivision (b) provides that "[t]he meaning of 'interested person' as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and manner involved in, any proceeding." This court has explained that courts may determine the sufficiency of a party's interest depending on the type of proceeding involved: "Section 48, subdivision

b. *Liberty has Waived or Forfeited the Right to Challenge the Order Directed at Trust Proceeds Due to Liberty*

Legion's attempt in a California court to satisfy its judgment from trust proceeds is subject to the express requirements of Code of Civil Procedure section 709.010, which provides the exclusive means in California for a judgment creditor to levy against a trust interest, and gives the court discretion to satisfy the judgment from the judgment debtor's interest in the trust. That statute provides in part: "The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by a judgment creditor to a court having jurisdiction over administration of the trust as prescribed in Part 5 (commencing with Section 17000) of Division 9 of the Probate Code. The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or

(a) provides a nonexclusive list of recognizable interests, providing the court with the authority to designate as an 'interested person' anyone having a property right in or claim against an estate which may be affected by the probate proceeding. On the other hand, section 48, subdivision (b) broadly permits the court to determine the sufficiency of a party's interest for the purposes of each proceeding conducted. 'Thus, a party may qualify as an interested person entitled to participate for purposes of one proceeding but not for another.' [Citation.] Thus, section 48 is designed to provide the probate court with flexibility to control its proceedings to both further the best interests of the estate and to protect the rights of interested persons to those proceedings." (*In re Estate of Maniscalco* (1992) 9 Cal.App.4th 520, 523-524, fn. omitted.) Were we to consider the question of standing under these provisions, we would readily conclude Liberty is an "interested person" with standing to object to the court's authority to act with respect to trust proceeds of which it is a beneficiary.

sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust property by the trustee."

Under this scheme, the court here could not compel payments of proceeds directly to Liberty from a trust unless San Diego County was the principal place of the trust's administration, defined as the "usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust." (Prob. Code, § 17002, subd. (a).) If the principal place of the trust's administration cannot be determined by that standard, it is determined by the sole trustee's residence or usual place of business, or that of either a designated cotrustee or any cotrustee in the event of multiple trustees. (Prob. Code, § 17002, subd. (b)(1), (2).)

Assuming Legion's application for the assignment order was in the nature of a petition within the meaning of Code of Civil Procedure section 709.010, under this provision the court had authority to act only as to trusts over which it had jurisdiction as outlined above. But the court's failure to comply with this statutory limitation does not raise an issue of subject matter jurisdiction; the court had inherent authority to hear and consider the matter before it, that is, Legion's petition for an assignment order, and it had personal jurisdiction over the parties before it, Legion and Liberty. Rather, the type of jurisdictional error implicated is an action of the court that is in "excess of jurisdiction,"⁴

⁴ Indeed Liberty characterizes the trial court's acts throughout its brief as acts in excess of jurisdiction.

a separate and distinct concept from subject matter or personal jurisdiction. The distinction was recently explained by the court of appeal in *Harnedy v. Whitty* (2003) 110 Cal.App.4th 1333: " 'The principle of "subject matter jurisdiction" relates to the inherent authority of the court involved to deal with the case or matter before it.' [Citation.] 'In contrast, a court acts in excess of jurisdiction " ' where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.' " [Citations.]' " (*Harnedy v. Whitty*, at p. 1344, quoting *Conservatorship of O'Connor*, *supra*, 48 Cal.App.4th at p. 1087-1088; see also *People v. Mower*, *supra*, 28 Cal.4th at p. 474, fn. 6; *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288; *Wozniak v. Lucutz* (2002) 102 Cal.App.4th 1031, 1040 [acts that exceed the defined power of the court in any instance whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are described as acts in excess of jurisdiction].) In the case where, as here, " 'a statute authorizes prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction' " (*Abelleira v. District Court of Appeal*, 17 Cal.2d at p. 290.)

To the extent the court acted contrary to Code of Civil Procedure section 709.010 by including in its assignment order trusts not under its administration, its act was in excess of jurisdiction. As a consequence, by failing to appear and not raising any issue relating to the trial court's authority to act below, Liberty has waived and/or forfeited its

right to raise any such issue at this stage. (E.g. *People v. Mower, supra*, 28 Cal.4th at p. 474, fn. 6; *Cowan v. Superior Court* (1996) 14 Cal.4th 367, 371.)

3. *Order as to Probate Proceeds Due Liberty*

We reject Liberty's argument that the court exceeded its jurisdiction to the extent its order can be read to require Liberty to assign any and all rights to receive current and future payments from any and all probate estates under Code of Civil Procedure section 708.510.

The Enforcement of Judgments Law (Code Civ. Proc., §§ 680.010-724.260) provides: "Except as otherwise provided by law, all property of the judgment debtor is subject to enforcement of a money judgment." (Code Civ. Proc., § 695.010, subd. (a).) Relevant here, Code of Civil Procedure section 708.510, subdivision (a) provides in part: "Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver . . . all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments. . . ." The statute proceeds to set forth a *noninclusive* list of the types of payments subject to such an assignment order.⁵ (Code Civ. Proc., § 708.510, subd. (a)(1)-(6).)

⁵ This provision is limited to the extent that the moneys sought to be assigned are exempt from enforcement of judgments: "Where a specific amount of the payment or payments to be assigned is exempt by another statutory provision, the amount of the payment or payments to be assigned pursuant to subdivision (a) shall not exceed the amount by which the payment or payments exceed the exempt amount." (Code Civ. Proc., § 708.510, subd. (f).) Of course, due to its failure to oppose Legion's motion or appear at the hearing, Liberty may not raise any claim of exemption before us.

Liberty implicitly concedes it is properly subject to such an assignment order with respect to the probate proceeds; it complains the court's order goes further in that it "presumed jurisdiction over the property, wherever located, not simply the persons properly before the Court with an entitlement to the property." We acknowledge the language of the assignment order – providing that "any and all proceeds due from any Trust or Probate . . . which are presently due or to become due in the future shall be paid directly to [Legion]" – may be interpreted as compelling nonresident third parties administering the probate estates to pay over proceeds directly to Legion. To the extent the court's order purports to compel acts by nonresident third persons over which the court does not have personal jurisdiction,⁶ or directly affect title to the out-of-state property, the order is without force and effect. (See Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (Rutter 2003) § 6:1435 [assignment order enforceable against a nonresident third person only if he or she were subject to the California court's personal jurisdiction]; *Hardy v. Hardy, supra*, 164 Cal.App.2d at pp. 79, 81 [court of appeal reversed California court order to the extent it imposed a lien on Illinois

⁶ This court recently explained that " '[d]ue process permits the exercise of personal jurisdiction over a nonresident defendant in the following four situations: (1) where the defendant is domiciled in the forum state when the lawsuit is commenced [citation]; (2) where the defendant is personally served with process while he or she is physically present in the forum state [citation]; (3) where the defendant consents to jurisdiction [citations]; and (4) where the defendant has sufficient 'minimum contacts' with the forum state, such that the exercise of jurisdiction would not offend " 'traditional notions of fair play and substantial justice' " [citation].' " (*Muckle v. Superior Court* (2002) 102 Cal.App.4th 218, 226, quoting *In re Marriage of Fitzgerald v. King* (1995) 39 Cal.App.4th 1419, 1425.)

spendthrift trust to secure alimony and support payments as the order was an effort to directly affect title to land and movables beyond the court's jurisdiction].)

However, we will not so interpret the order. To uphold its validity, we interpret the order as compelling Liberty to execute an assignment in Legion's favor of its present or future⁷ right to any probate proceeds due it. As Liberty's assignee, Legion then steps into Liberty's shoes and acquires Liberty's rights, including the right to compel payment of probate proceeds due it under the assignment. (See *National Enterprises, Inc. v. Woods* (2001) 94 Cal.App.4th 1217, 1237; *Professional Collection Consultants v. Hanada* (1997) 53 Cal.App.4th 1016, 1018-1019 ["assignee stands in the shoes of the assignor, acquiring all of its rights and liabilities"]; *Brienza v. Tepper* (1995) 35 Cal.App.4th 1839, 1848-1849.) In view of Liberty's waiver of all other issues, our conclusion that fashioning such an order was within the court's fundamental jurisdiction ends the inquiry.

DISPOSITION

That portion of the court's assignment order purporting to compel payment of probate proceeds by nonresident third persons or purporting to place a lien on out-of-state

⁷ We are aware of authority holding assignments of future expectancies are void. (See *Orkow v. Orkaw* (1933) 133 Cal.App. 50, 51; *Wells v. Wells* (1946) 74 Cal.App.2d 449, 453.) These authorities, however, predate the 1982 adoption of the Enforcement of Judgments Law, which expressly permits assignments of rights to payments to become due, whether or not conditioned on future developments. (Code Civ. Proc., § 694.010; *Evans v. Paye* (1995) 32 Cal.App.4th 265, 276.)

probate proceeds is reversed. The order is otherwise affirmed. The parties shall bear their own costs on appeal.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

McDONALD, J.